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REPORT OF THE EXPERT MEETING ON EXPERIENCES WITH BILATERAL AND REGIONAL APPROACHES TO MULTILATERAL COOPERATION IN THE AREA OF LONG-TERM CROSS-BORDER INVESTMENT, PARTICULARLY FOREIGN DIRECT INVESTMENT

Held at the Palais des Nations, Geneva
12 to 14 June 2002

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Chapter I

CHAIRPERSON'S SUMMARY

A. Salient points

1. Experts had a rich, interesting and fruitful debate on the subjects under consideration. In accordance with the guidelines for the functioning of the UNCTAD intergovernmental machinery arising out of the Mid-term Review, the following reflects "the substantive dialogue among experts from all parts of the world and general points of agreement with a view to building consensus on the issue".[1]

2. The main common elements in many bilateral investment treaties (BITs) and regional integration agreements (RIAs) are:

- Preamble (aims and purposes);
- Scope and definition (investment, investor, territory);
- Treatment standards (national treatment, most-favoured-nation (MFN) treatment, fair and equitable treatment, full protection and security);
- Taking of property (direct/indirect taking, compensation upon expropriation);
- Transfer of funds (inward/outward);
- Dispute settlement (consultation, conciliation and arbitration);
- Subrogation (investment insurance);
- Final clauses.

3. It was pointed out, however, that common elements reveal a variety of approaches with regard to their specific content.

4. The main different elements in many BITs and RIAs are:

- Definitions (portfolio included or not; investor definition);
- Treatment standards (coverage of pre- or post-entry);
- Provision on performance requirements (addressed or not; linkage to advantages);
- Takings (inclusion of regulatory takings);
- Transfer of funds (balance of payments and other exceptions);
- Dispute settlement (how the investor–State relationship is handled);
- Development provisions (reservations, temporary derogations, waivers, exceptions, transition periods, etc.);
- Transparency;
- Institutional mechanisms (monitoring, review, revision).

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[1] "Guidelines for the functioning of the UNCTAD intergovernmental machinery", TD/B(S-XIX)/4, paragraph 13.

5. Development-related considerations that could be borne in mind when formulating IIAs are the following:

(a) Every treaty provision could reflect development concerns, be tailored to the needs of the participating parties, and in particular reflect the asymmetries between countries. In addition, every treaty could reflect real-life economic, social and political considerations and avoid falling into the trap of ideological polarization;

(b) Flexibility considerations, and means to address development are important: positive- or negative-list approaches, or combinations thereof, gradual liberalization approaches, reservations, exceptions, temporary derogations, transitional arrangements, institutional monitoring mechanisms and peer-review processes;

(c) The content of international investment agreements (IIAs) needs to relate to contemporary interpretations of the concept of development, for example provisions on the right to development, and, more generally, to take account, where feasible, of other agreements and initiatives in related areas;

(d) Development concerns could be reflected in specific treaty provisions, for example:

(i) The objectives of treaties, as stated in the preamble;

(ii) Definitions, with exceptions based on considerations with regard to the desired legal form of investment, the size of investment, its timing and its nature (in particular, short-term capital flows of a speculative nature should be excluded);

(iii) Treatment standards, with possible inversions based on exceptions aimed at protecting local entrepreneurs or specific sectors; postponements of applicability; granting of special privileges; preferential treatments on the basis of ethnic considerations;

(iv) Transfer-of-funds provisions, with exceptions, temporary suspensions and/or derogations;

(v) Dispute settlement provisions, with possible exclusions with regard to the environment, taxation issues and prudential norms;

(vi) Monitoring mechanisms, enabling the dynamic and continuous evolution of treaty provisions and their interpretation in the context of development considerations;

(vii) Provisions on informal procedures for discussing investment questions and treaty interpretation (reference to the NAFTA Free Trade Commission and its Notes of Interpretation, and informal negotiations at the OECD);

(e) Of particular importance is the principle of special and differential treatment and its possible applicability to IIAs through, for example:

(i) Scope and definition, and possible exclusions from coverage based on the size of the economies involved and other economic considerations;

(ii) Treatment, and possible exemptions for countries based on the regional economic integration organization (REIO) principle and economic considerations;

(iii) The permitted use of performance requirements insofar as they are compatible with existing WTO rules;

(iv) General exceptions in the light of national development objectives, especially for small and medium-sized enterprises;

(v) Dispute settlement provisions that allow States access to technical assistance to pursue cases, and special funds to finance the legal costs incurred by States in that connection;

(vi) Coupling of regulations with technical assistance means to achieve standards;

(f) Transitional arrangements could be based on objective criteria, not on arbitrary time limits;

(g) Technical assistance measures addressing inequalities in negotiation capacity, both technical and economic in nature, could be required.

6. In addition, the following salient points were discussed:

(a) Treaties' possible reflection of sovereign rights to regulate entry and establishment and their relationship to market access and establishment issues;

(b) Treaties' possible reflection of the potential tension between liberalization goals and protectionist tendencies;

(c) The importance of transparency for the effective conduct of international business, the accountability of business and the attractiveness of host countries as locations for foreign direct investment;

(d) Bilateral/regional/multilateral levels of regulation: benefits and difficulties with each; and the question of compatibility in the light of overlapping obligations and free-rider problems posed by MFN clauses;

(e) Regional agreements and the scope of harmonization of substantive treaty provisions such as incentives or positions vis-à-vis third parties;

(f) The relationship between the legal and economic interpretation of issues as a guide to the formulation of specific treaty provisions;

(g) Interpretation of treaty provisions in the light of recent treaty application experience, and the need to adapt traditional concepts to changing circumstances;

(h) The broader issue of what constitutes development in the context of liberalization in general, and IIAs in particular;

(i) Inequalities in negotiation capacity, both technical and economic;

(j) The need to see IIA treaty making also in the broader context of the evolution of the international economic system, and in particular the problems posed by the heavy debt burden of a number of developing countries, the continuous need for official development assistance and the international financial system.

B. Summary of discussions

7. The discussions of the expert meeting on agenda item 3 were structured in accordance with the following three themes:

(a) Common elements in bilateral investment treaties and regional integration agreements;

(b) Different elements in bilateral investment treaties and regional integration agreements; and

(c) Issues related to the development dimension.

8. In his opening address, the Director of the Division on Investment, Technology and Enterprise Development stressed that the convening of the expert meeting responded to the two challenges posed by the pursuit of the UNCTAD mandate and the mandate arising out of the Fourth Ministerial Meeting of the WTO. In this context he recalled the earlier cycle of ex. rt meetings on the "development-friendliness" of international investment agreements (IIAs). He said that in accordance with the Mid-term Review's "Guidelines for the functioning of the UNCTAD intergovernmental machinery" the outcome of the meeting would take the form of a chairperson's summary that would, where feasible, indicate areas of

consensus and concern. He emphasized his hope that this new flexible and unconstrained format would lend itself to discussion of the possible contents, formulation and implementation of development-related provisions in IIAs. He stressed that at a time when the international community was discussing an international framework on foreign investment it was of crucial importance to reflect on the need to ensure that investment rules take development concerns into account. At the same time, new issues that might affect both the protection and the promotion of investment and investors, and the development concerns and priorities of the communities in which they operated, should be addressed.

9. In his introduction to agenda item 3, the Chief of the Investment Policies and Capacity-building Branch of the Division on Investment, Technology and Enterprise Development stressed that international rule-making on investment was multifaceted and spanned the bilateral, regional, interregional and multilateral levels. At the end of 2001 the universe of international rules and norms for foreign investment encompassed more than 2,000 bilateral investment treaties (BITs), some 2,100 double taxation treaties and more than 140 regional integration agreements (RIAs) involving in one form or the other almost all the countries of the world. These instruments came in a variety of forms, ranging from binding to voluntary instruments or combinations thereof, and with a varying degree of commitments. In all, they had created an intricate and complex web of overlapping commitments and obligations. He reiterated that one of the objectives of the expert meeting would be to provide a structured overview of this complexity by way of highlighting the elements common to most of these instruments, identifying the main areas of divergence, and indicating whether these similarities and differences had changed over the past five to six years, and, if so, how. In addition, he said that the meeting ought to help the secretariat clarify in what manner the issue of development had found its expression in these international instruments.

10. The content of BITs had become increasingly standardized over the years, and their main provisions typically dealt with the scope and definition of foreign investment; admission of investments; national and most-favoured-nation (MFN) treatment and/or fair and equitable treatment; guarantees and compensation in respect of expropriation; guarantees of free transfer of funds; and dispute-settlement provisions, both State-to-State and investor-to-State. The main differences lay in the formulations on admission and entry of investment, promotion of investment, general standards of treatment and performance requirements. Differences could also be found in provisions dealing with the scope and range of qualifications and exceptions to the standards of national and MFN treatment, the standards for compensation upon nationalization, balance-of-payments exceptions regarding the transfer of funds, and the requirement for exhaustion of local remedies in the case of investor–State dispute settlement.

11. With regard to regional instruments on investment, a large number of these would include investment provisions, as did several other trade agreements that did not aim specifically at investment integration. Only a few regional instruments were entirely devoted to investment, however. He stressed that the commonality across regional instruments was much less obvious than in BITs. RIAs oriented towards investment protection tended to have broad and inclusive definitions. Instruments oriented towards liberalization at times used

relatively narrower definitions of investment, in the light of the differences between foreign direct investment and other kinds of international transactions. Formulations on investment promotion could be found in several RIAs, although the relevant provisions tended to be weak and general in nature. Many RIAs now provided for both MFN and national treatment but only post-entry. A large number of RIAs included provisions on free transfers of funds related to investments. Similarly, the issue of balance-of-payments difficulties was addressed in a growing number of RIAs. Some RIAs provided for the possibility of settling disputes by means of consultation and negotiation, whereas others provided for consultation through a body entrusted with the monitoring and implementation of the specific agreement. Similarly, the issue of entry and establishment of investment in RIAs would reveal a variety of approaches. RIAs also tended to differ in their provisions with regard to performance requirements.

12. With regard to development-related provisions, he stressed that the specific development content of BITs remained very limited. Their major role in this respect would lie in the contribution they could make to securing a welcoming and stable environment for foreign investment, while at the same time allowing rather wide latitude for developing countries to pursue their individual policy objectives. Hence, BITs facilitated investment and through this means they might have a positive impact on development. However, as current practice stood, they appeared in general not to contain specific provisions tackling development issues. By contrast, some RIAs had explicitly adopted development-oriented provisions. As was the case with the vast majority of international agreements, RIAs also contained various exceptions, safeguards and transition periods that were intended to cater for the different objectives and needs of parties at different levels of development. These qualifications might apply to all substantive provisions and have a particular importance with regard to the standard of treatment, both pre- and post-entry. A special category of exceptions also affected the repatriation of funds.

13. In closing, he reiterated that the trends of recent years showed that current practice in BITs and RIAs, though not expressly dealing with development matters, was by no means wholly incompatible with such concerns. A clarification of the interrelationship between existing standards of investor protection and investment promotion and the best means by which development concerns could be expressed in the evolution of those standards would therefore be needed.

14. The session began with presentations by the two resource persons. On the issue of common elements, Professor M. Sornarajah of the National University of Singapore stressed the similarities in BITs and RIAs insofar as their external structure and frameworks were concerned. Nearly all agreements would have preambles that made reference to the mutual benefit that all the parties to an agreement should derive from the agreement in question – including a reference to the mutuality of flows which in and by itself would be an inexact formulation in the light of the single-dimensional direction of investment flows from capital-exporting to capital-importing countries. This would usually be followed by provisions on definitions as to the coverage of the agreement, with some treaties under review confining themselves to a narrow approach (excluding foreign portfolio investment, for example), and

provisions on treatment issues. Here, the general commonality would extend to the granting of national treatment and MFN treatment, although each treaty would include a number of exemptions brought forward by a variety of means. The issue of fair and equitable treatment was common to most treaties, but constituted "uncharted" territory in terms of the interpretation of this standard in the light of references to international minimum standards. Similarly, most treaties dealt with the issue of taking of property, which in recent treaty practice referred increasingly to the issue of indirect takings in addition to the matter of direct expropriations, which were of less importance in the current economic climate. In this context, treaty references to acts equivalent to a taking revealed a great variety of differences. (In particular, the NAFTA context revealed a number of problems/difficulties with this approach.) Treaties also commonly dealt with the issue of compensation, usually with references to its promptness, adequacy and effectiveness, and indicated parameters such as public purpose, non-discriminatory nature and due process. A related issue in this context was subrogation, which also figured in most IIAs. In addition, BITs and RIAs addressed issues related to repatriation of funds, and matters related to settlement of disputes between States. Investor–State dispute settlement was also addressed. Although this was not common in all agreements, as it touched on status questions that involved recognizing rights of investors and extending provisions on remedies to non-State actors, it revealed some convergence, for example insofar as exhaustion of local remedies was concerned. Common to all State-to-State provisions was a reference to arbitration. Finally, all agreements had termination clauses.

15. The second resource person, Professor P. Muchlinski of the Kent Law School, University of Kent, United Kingdom, in referring to the traditional commonality of instruments, added that there was a need to think about the balance between the right to regulate on the one hand and the need to open markets on the other. He stressed the importance of expanding the reference base for considering treaty provisions, and also of including current international practice in other areas. With regard to dispute-settlement provisions, he pointed to the need for provision of adequate assistance to developing countries in the pursuit of dispute-settlement cases and in the related consultation and arbitration processes.

16. In the subsequent discussion, the following points were made:

(a) Experts pointed to the continuous evolution of concepts in BITs and RIAs as a reflection of the growing involvement of developing countries in the investment protection and promotion process, and the growing complexity of economic issues that needed to be addressed. In this context, they stressed the need to allow for the adaptability of traditional standards to economic reality and modern business practices, especially those relating to the mode of entry and establishment and post-entry operations.

(b) Several experts drew attention to the need to draw lessons from the BIT and RIA experience, including best practices, for the multilateral context, and,

more generally, the overall role of BITs in the light of the proliferation of regional and multilateral approaches.

(c) Experts stressed that treaties could and did reflect sovereign rights to regulate entry and establishment and their relationship to market access and establishment issues. In addition, treaties could reflect the possible tension between liberalization goals and protectionist tendencies.

(d) With regard to provisions related to the definition of investment, inclusion of foreign portfolio investment could lead to uncertainty as to the persons or entities upon whom treaty rights were conferred. At the same time, it was pointed out that the scope of definition provisions would need to reflect economic reality. In this context, some experts suggested that care would need to be taken to avoid any unwarranted differential treatment between different types of investment, for example through the exclusion of foreign portfolio investment from the definition of covered investments.

(e) With regard to provisions on transparency, experts indicated it was necessary to offer certainty and predictability to investors through the open availability of information concerning investment laws, rules and regulations, and administrative procedures, so as to avoid unnecessary surprise for investors in their interaction with host countries. It was also pointed out that transparency was important for the accountability of business and government. In this context, questions were raised with regard to the necessary scope of transparency provisions, especially in the light of their technical feasibility in developing countries.

(f) In the discussion on provisions dealing with takings, especially regulatory takings, the point was made that an ordinary breach of contract would not normally constitute a breach of international agreements, as these concerned only actions – or lack thereof – by Governments affecting investor rights.

(g) Some experts referred to the need to monitor treaty experience, especially with regard to provisions related to the issue of indirect takings and the growing extent to which these were being utilized. This would also extend to provisions on fair and equitable treatment and their subsequent interpretation in treaty practice. Subsequent disputes arising out of these two issues would place a considerable burden on the resources (both financial and technical) available to developing countries. The development of a case history would be useful in this context.

(h) It was pointed out that the definition of investment disputes would have to reflect economic complexities that would not only require a flexible approach based on functional analysis, but also emphasize the importance of a case-specific approach and consultative mechanisms.

(i) With regard to provisions dealing with investor–State dispute settlement, numerous references were made to ongoing discussions and negotiations in the Western Hemisphere. Among others, these raised – in a number of instances – questions related to the constitutionality of such provisions, wherein the granting of a more favourable treatment to foreign investors (i.e. access to international arbitration) than to domestic investors could be seen as unconstitutional. In addition, questions relating to the "democratic deficit" in international rule-making in this area were touched upon.

(j) It was also observed that traditional BIT practice, reflecting the unchanged functionality of these agreements, left no room for adaptation. Specially drafted model BITs appeared not to provide for sufficient flexibility to take into account specific developing country situations. There would thus be a need for the development of developing country BIT standards, coupled with the need for capacity building in this regard.

17. On the issue of differences in BITs and RIAs, the resource persons pointed particularly to the issue of entry and establishment of investment. A growing number of recent RIAs and BITs would aim at liberalizing the admission phase through the extension of provisions on MFN and national treatment to the pre-entry phase, often subject to sectoral and other exceptions in the form of opt-out (i.e. a negative-list or top-down approach as in NAFTA) or opt-in models (i.e. a positive-list or bottom-up approach as in the General Agreement on Trade in Services (GATS). Current BIT and RIA practice would also show differences in their provisions with regard to performance requirements, with some addressing them in detail. In addition, it was pointed out that the common elements in IIAs would reveal a variety of approaches with regard to their specific content. In particular, scope and definition varied with regard to extending treaty (protection) coverage to investors, ranging from approaches that included substantially all foreign assets to narrower definitions limiting treaty coverage to investments, through references to conformity with national laws and regulations, types and/or sizes of investments, and/or legal forms of incorporation that also addressed issues of control and ownership. This was further accentuated by references to the timing of investments and the duration of treaty coverage. Likewise, standard takings clauses showed a great variety of approaches, in particular as regards the issue of regulatory takings and prescribed exceptions and applications of these clauses. In the area of investor–State dispute settlement, most agreements would provide for automatic recourse to arbitration, whereas others would require prior exhaustion of local remedies and prior consultation. Similarly, while the issue of transfer of funds would commonly be addressed in the majority of IIAs, differences were apparent in several exceptions linked to record keeping, money laundering, court order infringements, and, more importantly, balance-of-payments difficulties.

18. In the subsequent discussion the following points were made:

(a) While the overall structure and format of BITs had largely remained unchanged over the years, their content revealed an evolution in relation to

several aspects, with differences particularly as regards treatment issues, transparency, investor–State dispute settlement, the question of performance requirements, and new issues such as environment and labour standards.

(b) Some experts noted that differences in approaches would reflect uncertainty regarding the interpretation of established terms. Recent treaty practice would illustrate this not only with regard to flexibility in approaches, but also with regard to a more cautious interpretation of standard clauses. Most revealing in this connection was the issue of takings and the related question of arbitrator inconsistency and the scope of arbitrator influence on the policy-making of the State in vital areas. Problematic in this context would be the recent experience with interpretation of treaty elements that went beyond the original intent of a treaty.

(c) Another case in point would be the compatibility problems arising out of the different levels of obligations enshrined in different treaties to which a State might be party. Most problematic in this respect would be the question of an extension of specific treaty provisions (and high standards) to non-treaty parties through MFN clauses, and the free-rider problems associated with this. In this context, reference was made to the applicability of the Vienna Convention and provisions found in a number of treaties referring to other obligations by contracting parties, as well as regional economic integration organization (REIO) clauses contained in several BITs and RIAs.

(d) With regard to the scope and applicability of treaty provisions, reference was made to possible combinations of top-down and bottom-up approaches. In future negotiations, this could raise issues related to the usefulness of the distinction between goods and services.

(e) Differences in treatment provisions would also reflect the difficulty of a uniform application of such standards in mixed-economy situations (i.e. economies consisting of State-owned, mixed and private enterprises). In this context, the issue of coverage of non-enterprise entities was also addressed.

(f) The point was made that voluntary instruments might seek to suggest higher standards (of liberalization) than might be possible in legally binding instruments.

(g) Finally, the question was raised whether the right to regulate would go beyond expropriation issues and cover performance requirements and other conditions imposed on foreign investors.

19. In his introduction to the issue of the development dimension of international investment agreements, the Director of the Division on Investment, Technology and Enterprise Development pointed to the underlying rationale for international treaty-making in

this area and ways and means by which development concerns could be and had been addressed in IIAs. The resource persons pointed to the overall context of development issues and their possible reflection in IIAs, providing an overview of the various means employed to address this issue, and also to the wider policy considerations that it raised.

20. In the subsequent discussion the following points were made:

(a) Every treaty provision could reflect development concerns, be tailored to the needs of the participating parties, and in particular reflect the asymmetries between countries. In addition, every treaty could reflect real-life economic, social and political considerations and avoid falling into the trap of ideological polarization.

(b) The point was also made that the content of IIAs needed to relate to contemporary interpretations of the concept of development, for example provisions on the right to development, and, more generally, to take account, where feasible, of other agreements and initiatives in related areas.

(c) Experts stressed the importance of flexibility considerations, and means to address development. These could include positive- or negative-list approaches, or combinations thereof, gradual liberalization approaches, reservations, exceptions, temporary derogations, transitional arrangements, institutionalized monitoring mechanisms and peer-review processes.

(d) It was also pointed out that flexibility of approaches could be achieved through procedural means (review bodies charged with monitoring treaty application) and review mechanisms. The practice in some RIAs of peer-review processes based on consultation, discussion and examination (so-called roll-back approaches) was cited as an example. In addition, treaty provisions could be made subject to reservations, exceptions and temporary derogations (in times of economic crises). In general, gradual liberalization and step-by-step approaches, in combination with strong processes, clear commitments to an ultimate objective and transparency obligations, could help in bridging the gap between liberalization goals and policy considerations aimed at preserving national sovereignty. The degree of regulation required for development would need to be addressed in this context.

(e) In addition, approaches embedded in wider contexts could allow for a more comprehensive approach to investment promotion. In this regard, reference was made to the fact that, generally, RIAs might cover not only liberalization of capital movements but also movements of labour, thus addressing economic asymmetry between capital-exporting developed countries and labour-exporting developing countries.

(f) With regard to specific treaty provisions, experts pointed out that development concerns could be reflected in a variety of ways. In particular, they could be reflected in the objectives of treaties, as stated in their preamble. Definitions could allow for exceptions based on considerations with regard to the desired legal form of investment, the size of investment, its timing and its nature. (In particular, short-term capital flows of a speculative nature should be excluded.) Standards of treatment could allow for possible inversions based on exceptions aimed at protecting local entrepreneurs or specific sectors; postponements of applicability; granting of special privileges; and preferential treatments on the basis of ethnic considerations. Transfer-of-funds provisions could have exceptions, temporary suspensions and/or derogations. Dispute settlement provisions could allow for possible exclusions with regard to the environment, taxation issues and prudential norms. Finally, the importance of monitoring mechanisms in this regard was stressed, insofar as they enabled the dynamic and continuous evolution of treaty provisions and their interpretation in the context of development considerations.

(g) With regard to development provisions, experts pointed to the NAFTA Free Trade Commission and its Notes of Interpretation, which provided directives on treaty interpretation. This would constitute an evolving approach that would focus not on renegotiation and reinterpretation of provisions, but rather on their elaboration in treaty practice. Such arrangements could well offer a model for the inclusion of development-related issues in treaty making. One expert pointed to the GATS as a possible model for the inclusion of development-friendly provisions.

(h) Experts also emphasized the importance of the principle of special and differential treatment of developing countries and its possible applicability to IIAs. This could take the form of possible exclusions regarding scope and definition based on the size of the economies involved and other economic considerations; possible exemptions from treatment standards based on the REIO principle and economic considerations; the permitted use of performance requirements insofar as they were compatible with existing WTO rules; general exceptions in the light of national development objectives, especially for small and medium-sized enterprises; dispute-settlement provisions that allowed States access to technical assistance to pursue cases, and special funds to finance the legal costs incurred by States in that connection; and the coupling of regulations with technical assistance means to achieve standards set by States.

(i) Transitional arrangements could be based on objective criteria, and not on arbitrary time limits.

(j) Some experts also stressed the importance of national preparedness to take advantage of treaty provisions, and the national capacity effectively to deal

with them both in technical terms – witness the difficulty with arbitration procedures of the International Centre for Settlement of Investment Disputes – and in substantive terms – witness the lack of economic capacity (industrialization etc.). In this context, questions were raised with regard to the possibility of increasing locational attractiveness through regional integration means, and the consequent issue of the scope of harmonization in such arrangements, ranging from common enterprise codes to incentive systems and positions vis-à-vis third parties.

(k) Although the protection of investments and investors in IIAs in itself contributed to the promotion of investment, promotion provisions in IIAs were relatively underdeveloped, and this led to the question of how to formulate concrete provisions in the light of the considerations involved in private sector investment decision-making. In this context, incentives and the efficient allocation of resources were cited as possible issues for consideration.

Chapter II

ORGANIZATIONAL MATTERS

A. Convening of the Expert Meeting

21. The Expert Meeting on Experiences with Bilateral and Regional Approaches to Multilateral Cooperation in the Area of Long-term Cross-border Investment, particularly Foreign Direct Investment was held at the Palais des Nations, Geneva, from 12 to 13 June 2002.

B. Election of officers

22. At its opening meeting, the Expert Meeting elected the following officers to serve on its bureau:

Chairperson:	Ms. Margaret Liang (Singapore)
Vice-Chairperson-cum-Rapporteur:	Mr. Marinus Sikkel (Netherlands)

C. Adoption of the agenda

(Agenda item 2)

23. At the same meeting, the Expert Meeting adopted the provisional agenda circulated in document TD/B/COM.2/EM.11/1. The agenda for the Meeting was thus as follows:

1. Election of officers
2. Adoption of the agenda
3. Experiences with bilateral and regional approaches to multilateral cooperation in the area of long-term cross-border investment, particularly foreign direct investment
4. Adoption of the report of the Meeting

D. Documentation

24. For its consideration of the substantive agenda item, the Expert Meeting had before it a note by the UNCTAD secretariat entitled "Experience with bilateral and regional approaches to multilateral cooperation in the area of long-term cross-border investment, particularly foreign direct investment" (TD/B/COM.2/EM.11/2).

E. Adoption of the report of the Meeting

(Agenda item 4)

25. At its closing meeting, the Expert Meeting authorized the Rapporteur to prepare the final report of the Meeting under the authority of the Chairperson.

Annex

ATTENDANCE *

1. Experts from the following States members of UNCTAD attended the Meeting:

Albania
Angola
Australia
Belarus
Benin
Botswana
Brazil
Burkina Faso
Canada
Central African Republic
Chile
China
Congo
Costa Rica
Croatia
Cuba
Czech Republic
Democratic Republic of the Congo
Ecuador
Egypt
Estonia
Ethiopia
Finland
France
Guinea
India
Indonesia
Iran (Islamic Republic of)
Italy
Japan
Kyrgyzstan
Malawi
Mauritius
Mexico
Morocco
Nepal
Netherlands
Nigeria
Norway
Oman
Pakistan
Peru
Qatar
Republic of Korea
Russian Federation
Senegal
Sierra Leone
Singapore
Spain
Switzerland
Thailand
Uganda
United Kingdom of Great Britain and Northern Ireland
United States of America
Zambia

* For the list of participants, see TD/B/COM.2/EM.11/INF.1.

2. The following intergovernmental organizations were represented at the Meeting:

Arab Labour Organization
Caribbean Community
Economic Cooperation Organization
European Free Trade Association
League of Arab States
Organisation for Economic Co-operation and Development
South Centre

Specially Invited

East African Community

3. The following specialized agency and related organization were represented at the Meeting:

United Nations Industrial Development Organization
World Trade Organization

4. The Economic and Social Commission for Western Asia and the International Trade Centre UNCTAD/WTO were represented at the Meeting.

5. The following non-governmental organizations were represented at the Meeting:

General Category

International Chamber of Commerce
World Wide Fund for Nature International

6. The following panellists attended the Meeting:

Mr. M. Sornarajah, Professor, National University of Singapore
Mr. Peter Muchlinski, Professor, Kent Law School, Canterbury, United Kingdom
Mr. Chung Tech Khov-Schild, Adjoint scientifique, SECO, Berne, Switzerland